



OFFICE OF  
INSURANCE COMMISSIONER

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Integrity, Compliance  
& Ethics Department

In the Matter of )  
) ORDER NO. D06-177  
KAISER PERMANENTE HEALTH )  
ALTERNATIVES and ) CONSENT AND ORDER  
KAISER FOUNDATION HEALTH ) LEVYING A FINE  
PLAN OF THE NORTHWEST, )

Authorized Health Care Service  
Contractors

**FINDINGS OF FACT**

1. Kaiser Permanente Health Alternatives ("KPHA") is authorized to conduct business in the state of Washington as a Health Care Service Contractor.
2. Kaiser Foundation Health Plan of the Northwest ("KFHPNW") was authorized to conduct business in the state of Washington as a Health Maintenance Organization ("HMO") prior to January 1, 2006. On that date, KFHPNW became licensed to do business in Washington as a Health Care Service Contractor ("HCSC").
3. KPHA and KFHPNW are referred to collectively herein as "Kaiser" or "the Kaiser licensees".
4. Beginning in 2002, both Kaiser licensees issued to Washington residents contracts which contained impermissible reductions or exclusions for some forms of contraceptive drugs and devices.
5. The OIC brought this matter to Kaiser's attention in or before May, 2002. Much correspondence ensued. In November, 2002, Kaiser admitted that the provision violated the law and reported to the OIC that the licensees had amended their contraceptive coverage accordingly.
6. In July, 2003 and on September 7, 2004 and December 16, 2004, Kaiser repeatedly filed additional standard master contracts that included the noncompliant contraceptive exclusions. Each of these filings again resulted in notifications to Kaiser that the provisions violate the Insurance Code.
7. On January 7, 2005, Kaiser submitted proposed amendment language which appeared compliant as to contraceptive issues. However, during the course of this submission, it was brought to the OIC's attention that the filings had not been submitted in their entirety; the optional prescription riders Kaiser sold with these policies had not been filed. When they were filed, they were found to contain the same inappropriate exclusion for

- prescription contraceptives obtained from out-of-network providers. OIC again notified Kaiser that this exclusion violates the Insurance Code.
8. Kaiser initially argued that the exclusion was legal. Another series of correspondence (telephone calls, emails, and letters) took place over approximately the next two months. Eventually Kaiser acknowledged that the exclusion was noncompliant and agreed to amend it.
  9. In late February of 2005, at OIC's instruction, Kaiser identified the number of female enrollees affected by the noncompliant provision. The largest membership in the affected plan was 792 in 2004, of which 167 members were females of childbearing age (15-44).
  10. In April, 2005, at OIC's instruction, Kaiser sent letters to each enrollee in the affected plans, notifying them of the error and instructing members with potentially wrongfully denied claims to contact Kaiser. One enrollee made four claims for contraceptives which were denied under this provision. Per OIC requirement, that enrollee's claims were retroactively paid on May 11, 2005.
  11. On December 9, 2005, Kaiser again filed a new standard master contract with a prescription rider. Again, the rider contained the same illegal exclusion of coverage for out-of-network prescription contraceptives. OIC disapproved the form. In February, 2006, Kaiser responded to the OIC by indicating the exclusion was inadvertently included and has been removed for future filings.

#### **CONCLUSIONS OF LAW**

1. WAC 284-43-822(1) deems it an unfair practice for a carrier to restrict, exclude, or reduce benefits on the basis of sex, and prohibits any terms relating to prescription contraceptives which are less favorable than terms applicable to other prescriptions. The Kaiser provisions excluding coverage for out-of-network contraceptive drugs and devices violated this provision.

#### **CONSENT TO ORDER**

NOW, THEREFORE, KPHA and KFHPNW each consent to the following in consideration of their desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of the companies' payment of a fine on such terms and conditions as are set forth below:

1. KPHA and KFHPNW consent to the foregoing Findings of Fact and Conclusions of Law as they pertain to these facts, consent to the entry of the Order and waive further administrative or judicial challenge to the OIC's actions related to the subject matter of the Order;
2. Within thirty days of the entry of this Order, KPHA and KFHPNW agree to pay to the OIC a joint, total fine in the amount of \$66,700 (Sixty-Six-Thousand-Seven-Hundred Dollars);

3. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of both KPHA's and KFHPNW's certificates of authority; and
4. KPHA and KFHPNW understand and agree that any future failure to comply with the statutes which are the subject of this Order constitutes grounds for further penalties which may be imposed in direct response to that further violation.

EXECUTED this 19<sup>th</sup> day of May, 2006.

KAISER PERMANENTE HEALTH  
ALTERNATIVES

By: Cynthia A. Zinter  
Title: Regional President

KAISER FOUNDATION HEALTH PLAN OF THE  
NORTHWEST

By: Cynthia A. Zinter  
Title: Regional President

**ORDER OF THE INSURANCE COMMISSIONER**

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. KPHA and KFHPNW are ordered to pay a joint, total fine in the amount of \$66,700.
2. The companies' failure to pay the fine within the time limit set forth above shall result in the revocation of the companies' Certificates of Authority, and in the recovery of the fine through a civil action brought on behalf of the commissioner by the attorney general.

ENTERED AT TUMWATER, WASHINGTON this 13<sup>th</sup> day of June, 2006.

Mike Kreidler  
Washington State Insurance Commissioner

By: Andrea L. Philhower  
Andrea L. Philhower  
Staff Attorney, Legal Affairs Division